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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,795	12/20/2000	Brian J. Moore	2690	8447

7590 09/21/2005

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EXAMINER

ZHONG, CHAD

ART UNIT	PAPER NUMBER
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2152

DATE MAILED: 09/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/742,795

Applicant(s)

MOORE ET AL.

Examiner

Chad Zhong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 31-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/05/2005 has been entered.

This action is responsive to communications: Amendment, filed on 07/05/2005.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-30, drawn to method of determining availability and unavailability of updates within a network, classified in class 709, subclass 203, 217, and 219
- II. Claims 31-34, drawn to a data structure having different fields within said data structure, classified in class 707, subclass 102.

3. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, Invention I has separate utility such as in a method of determining availability and unavailability of updates within a network, but lacks data structure containing different fields. In the instant case, Invention II has separate utility such as a data structure having different fields within said data structure, but lacks a method of determining availability and unavailability of updates within a network. See MPEP § 806.05(d).

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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- a. Group I search (claims 1-30) would require use of search of class 709, subclass 203, 217, and 219 (which would not be required for Group II).
- b. Group II search (claims 31-34) would require use of search of class 707, subclass 102 (which would not be required for Groups I).

5. A telephone call was made to Mr. Albert S. Michalik on 8/10/2005 to request an oral election to the above restriction requirement, a provisional election was made with traverse to prosecute the invention of Group I, claim 1-30. Applicant in responding to this Office Action must make affirmation of this election. Claim 31-34 are withdrawn from further consideration by examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

7. Claims 1-34 are presented for examination. In amendment, filed on 07/05/2005, Claims 1, 17, and 27 are amended.

Claims 2-16, 18-26, and 28-30 are previously presented.

Claims 31-34 are withdrawn from consideration:

8. It is noted that although the present application does contain line numbers in specification and claims, the line numbers in the claims do not correspond to the preferred format. The preferred format is

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to number each line of every claim, with each claim beginning with line 1. For ease of reference by both the Examiner and Applicant all future correspondence should include the recommended line numbering.

Specification

9. Applicant is required to update the status (pending, allowed, etc.) of all parent priority applications in the first line of the specification. The status of all citations of US filed applications in the specification should also be updated where appropriate.

Claim Rejections - 35 USC § 112, second paragraph

10. Claims 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The claim language in the following claims lacks antecedent basis:

i. "downloading information includes" - claim 2, line 2, there is no downloading information in claim 1.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371 (c) of this title before the invention thereof by the applicant for patent.

12. Claims 1-4, 10-20, 22-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Palaniappan, US 6,711,557.

13. As per claim 1, Palaniappan teaches a computer-implemented method, comprising:

at a client computer, obtaining information about the availability or unavailability of updates from a server (Col. 2, lines 10-17);

storing the information about available and unavailable updates at a local cache on the client computer (Col. 3, lines 52 through Col. 4, line 2); and

in response to a request for update information that may be available at the server, accessing the local cache to retrieve the information about available updates (Col. 4, lines 10-15, lines 25-35, lines 49-52).

14. As per claim 2, Palaniappan teaches downloading information includes accessing at least one Internet website (Fig 1, item 20).

15. As per claim 3, Palaniappan teaches obtaining information about available updates from the server includes obtaining data that changes the information about available updates in the local cache (Col. 3, lines 35-40).

16. As per claim 4, Palaniappan teaches storing the information about available updates includes storing data identifying whether a hardware device has a driver available for download from an online site (inherent in Col. 3, lines 35-40).

17. As per claim 10, Palaniappan teaches the data corresponding to the hardware device is present and indicates a version number of an available driver for that hardware device (inherent in Col. 4, lines 45-65; and Col. 1, lines 55-65).

18. As per claim 11, Palaniappan teaches storing the information about available updates includes storing data identifying whether at least one software component is available for download from an online site (Col. 3, lines 35-40).

19. As per claim 12, Palaniappan teaches at least one software component is available, and further

comprising storing data identifying whether installation of at least one available software component is dependent on installation of at least one other software component (Col. 4, lines 15-30).

20. As per claim 13, Palaniappan teaches at least one software component is available, and further comprising storing data identifying a version for at least one available software component (Col. 4, lines 45-65, wherein the version identification is inherently taught in Palaniappan, without version identifiers Palaniappan's system can not differentiate the newer versions of software updates that's available on the server).

21. As per claim 14, Palaniappan teaches accessing the local cache to retrieve the information about available updates indicates that an update is available, and further comprising, persisting information about the available update (Col. 3, lines 50-60).

22. As per claim 15, Palaniappan teaches downloading updates at a time when a connection exists based on the information persisted about the available update (Col. 4, lines 50-60).

23. As per claim 16, Palaniappan teaches accessing the local cache to retrieve the information about available updates indicates that an update is available, and further comprising, downloading the available update (Col. 4, lines 50-60).

24. As per claim 17, the claim is rejected for the same reasons as claim 1 above. In addition, Palaniappan teaches in a computing device, a system comprising:

network access software configured to access a network (Col. 3, lines 52-55; and Fig. 1, item 70);

a cache (Col. 2, lines 5-15; and Fig. 1, item 60);

a cache maintenance mechanism connected to the network access software and configured to maintain information in the cache corresponding to available updates maintained on the network and

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corresponding to unavailable updates (Col. 4, lines 10-15, lines 25-30; and Fig. 1, item 70); and automatic update software connected to access the cache in response to a request for update information on the network (Col. 3, lines 50-60; and Fig. 1, item 70), and to determine from the information in the cache whether an update is available or not available (Col. 4, lines 10-15, lines 25-30).

25. As per claim 18, Palaniappan teaches the cache maintenance mechanism maintains information in the cache by downloading information into the cache from a network site (Fig 2, item 10, 20).

26. As per claim 19, Palaniappan teaches the request for update information corresponds to a scheduled event (Col. 3, lines 50-60).

27. As per claim 20, Palaniappan teaches the automatic update software locates information about an update to a driver in response to a request for hardware-related updates (inherent in Col. 3, lines 35-40).

28. As per claim 22, Palaniappan teaches the information about the update to the driver comprises an online update and is included in a file in the cache (inherent in Col. 3, lines 35-40).

29. As per claim 23, the claim is rejected for the same reasons as rejection to claim 13 above.

30. As per claim 24, the claim is rejected for the same reasons as rejection to claim 11 above.

31. As per claim 25, the claim is rejected for the same reasons as rejection to claim 14 above.

32. As per claim 26, the claim is rejected for the same reasons as rejection to claim 11 above.

33. As per claim 27, the claim is rejected for the same reasons as claims 1 and 17 above. In addition, Palaniappan teaches a computer-readable medium having computer executable instructions, comprising: accessing an online source to obtain information related to available updates and information related to unavailable updates (Fig 2, item 10, 20; Col. 3, lines 52-55, and Col. 4, lines 10-15);

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caching the information (Col. 2, lines 5-15, lines 64-67);

receiving a request directed to whether a particular update is available for download from the online source (Col. 3, lines 50-60); and

accessing the cache to determine whether the particular update is available for download from the online source (Col. 3, lines 50-60; and Col. 4, lines 10-15).

34. As per claim 28, Palaniappan teaches the computer-readable medium of claim 27 wherein the online source is accessed via an Internet site (Fig 1).

35. As per claim 29, Palaniappan teaches the computer-readable medium of claim 27 wherein the cache indicates that the particular update is available, and further comprising, downloading the update (Col. 4, lines 45-50).

36. As per claim 30, Palaniappan teaches the computer-readable medium of claim 27 wherein the cache indicates that the particular update is available, and further comprising, persisting information corresponding to the update for later download of the update (Col. 3, lines 50-60; Col. 4, lines 50-60).

Claim Rejections - 35 USC § 103

37. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

38. Claims 5-6, 8-9, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Palaniappan, US 6,711,557, in view of Yasui et al. (hereinafter Yasui), JP 09-288572.

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39. As per claims 5 and 6, Palaniappan does not explicitly teach at least some of the data identifying whether the driver is available for download is maintained in a bitmask.

In a similar system, Yasui teaches the concept of at least some of data identifying whether a driver is available for download is maintained in a bitmask (Specification, [0006]-[0008]). It would have been obvious to one of ordinary skill in this art at the time of invention was made to combine the teaching of Palaniappan and Yasui because the teaching of Yasui to allow wherein at least some of the data identifying whether the driver is available for download is maintained in a bitmask would improve the latency and efficiency for Palaniappan's system by using simple algorithm for looking for a bit or flag indication of a newly available update for the system software/hardware.

40. As per claim 8, Palaniappan does not teach a setting of the bit indicates whether a file containing update information can be locally accessed.

In a similar system, Yasui teaches the concept of setting of a bit which indicates whether a file containing update information can be locally accessed (Specification, [0006], [0017]). It would have been obvious to one of ordinary skill in this art at the time of invention was made to combine the teaching of Palaniappan and Yasui because the teaching of Yasui to allow wherein a setting of the bit indicates whether a file containing update information can be locally accessed would improve the latency and efficiency for Palaniappan's system by using simple algorithm for looking for a bit or flag indication of a newly available update for the system software/hardware.

41. As per claim 9, Palaniappan teaches accessing the file, and searching for data therein corresponding to the hardware device (Col. 4, lines 50-60).

However, Palaniappan does not teach the bit setting indicating that the file can be locally accessed.

In a similar system, Yasui teaches the concept of a bit setting indicates that the file can be locally accessed (Specifications [0006]-[0008], [0017]). It would have been obvious to one of ordinary skill in

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this art at the time of invention was made to combine the teaching of Palaniappan and Yasui because the teaching of Yasui to allow wherein the bit setting indicates that the file can be locally accessed would improve the latency and efficiency for Palaniappan's system by using simple algorithm for looking for a bit or flag indication of a newly available update for the system software/hardware.

42. As per claim 21, Claim 21 is rejected for the same reasons as rejection to claim 5 above.

43. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over by Palaniappan, US 6,711,557, in view of Yasui et al. (hereinafter Yasui), JP 09-288572, in view of Angelo, US 5,944,821.

44. As per claim 7, Palaniappan and Yasui do not explicitly teach the bit is determined by hashing an identifier corresponding to the hardware device.

However, Angelo teaches the concept of a bit determined by hashing an identifier corresponding to the hardware device (Col. 4, lines 31-40, lines 63-67). It would have been obvious to one of ordinary skill in this art at the time of invention was made to combine the teaching of Palaniappan, Yasui and Angelo because the teaching of Angelo to allow wherein the bit is determined by hashing an identifier corresponding to the hardware device would improve the security Palaniappan and Yasui's system by using encryption algorithm to hide the hardware profiles from potential security threats.

Conclusion

45. Applicant's remarks filed 07/05/2005 have been considered but are found moot in view of the new grounds of rejection necessitated by Applicant's amendment.

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46. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents and publications are cited to further show the state of the art with respect to

“method AND SYSTEM FOR ENABLING OFFLINE DETECTION OF SOFTWARE UPDATES”.

- i. US 5881292 Sigal et al.
- ii. US 6581159 Nevis et al.
- iii. US 6618735 Krishnaswami et al.
- iv. US 6212632 Surine et al.
- v. “Meeting report Cybermedia”, Bin Ly, Dec 11, 1997
- vi. “Locate and install software and driver updates. A comparison of Cybermedia’s Oil Change and Synmantec’s Norton Web Services.”, Sandra Underhill, November 30, 1999.
- vii. “Oil Change” Forrest Stroud, June 25, 1998
- viii. US 5442771 Filepp et al.
- ix. US 5896523 Bissett et al.
- x. US 5793970 Fakes et al.
- xi. US 6085333 DeKoning et al.
- xii. US 6125388 Reisman.
- xiii. US 6148349 Chow et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chad Zhong whose telephone number is (571)272-3946. The examiner can normally be reached on M-F 7:15 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, BURGESS, GLENTON B can be reached on (571)272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

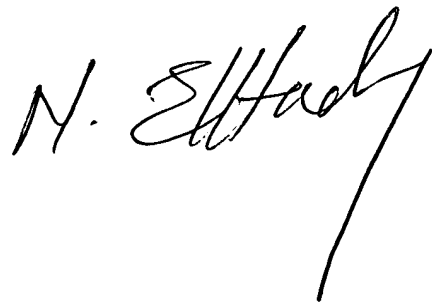
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained

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from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CZ

August 30, 2005

A handwritten signature in black ink, appearing to read "N. ElHadj". The signature is written in a cursive style with a long, sweeping vertical stroke at the end.